

An advisory legal opinion from the Office of the Attorney General³ examined the effect of the Municipal Home Rule Powers Act⁴ as it relates to a municipality enacting per diem and travel expenses that differ from s. 112.061, F.S. The act had passed less than a year prior to the City of Titusville's request for an opinion. Relying on the act, the attorney general's office determined that the city had broad home rule powers on any subject upon which the Legislature could act, including travel expenses for its employees. According to the opinion, s. 112.061, F.S., does not expressly preempt the subject of reimbursement for travel expenses to the state, notwithstanding the proposed goal of a "uniform system".

Maximum rates are established, as follows, for per diem and subsistence allowances under s. 112.061, F.S.

(6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.—For purposes of reimbursement rates and methods of calculation, per diem and subsistence allowances are divided into the following groups and rates:

(a) All travelers shall be allowed for subsistence when traveling to a convention or conference or when traveling within or outside the state in order to conduct bona fide state business, which convention, conference, or business serves a direct and lawful public purpose with relation to the public agency served by the person attending such meeting or conducting such business, either of the following for each day of such travel at the option of the traveler:

1. Fifty dollars per diem; or
2. If actual expenses exceed \$50, the amounts permitted in paragraph (b) for meals, plus actual expenses for lodging at a single-occupancy rate to be substantiated by paid bills therefor.

When lodging or meals are provided at a state institution, the traveler shall be reimbursed only for the actual expenses of such lodging or meals, not to exceed the maximum provided for in this subsection.

(b) All travelers shall be allowed the following amounts for subsistence while on Class C travel on official business as provided in paragraph (5)(b):

1. Breakfast \$3
2. Lunch \$6
3. Dinner \$12

(c) No one, whether traveling out of state or in state, shall be reimbursed for any meal or lodging included in a convention or conference registration fee paid by the state.

(d) For the 2002-2003 fiscal year only and notwithstanding the other provisions of this subsection, for Class C travel, a state traveler shall not be reimbursed on a per diem basis nor shall a traveler receive subsistence allowance. This paragraph expires July 1, 2003.

Based on the opinion of the attorney general issued in 1974 discussed above, some municipalities have adopted ordinances that provide per diem and subsistence allowances that exceed these rates.

³ Op. Att'y Gen. Fla. 74-18 (1974).

⁴ Ch. 73-129, L.O.F.

However, a more recent advisory legal opinion from the Office of the Attorney General reached a different conclusion. The City of Ft. Lauderdale requested an opinion on whether a municipality can provide an expense account to city officials and citizen volunteer members that does not have limitations on per diem rates as established under s. 112.061, F.S.⁵ The attorney general's office concluded, in an opinion dated January 3, 2003, that s. 112.061, F.S., establishes the maximum rates of per diem and subsistence allowances for government employees and is applicable to a municipality. In reaching this conclusion, the attorney general's office relied on the stated goal in s. 112.061, F.S., of establishing uniform maximum rates and limitations on travel expenses. The opinion recognized the extensiveness of the Municipal Home Rule Powers Act and agreed that the Legislature had not preempted the area of travel reimbursement by enacting s. 112.061, F.S. However, the opinion concludes that a municipality may enact ordinances on the subject of per diem and subsistence allowances, but the rates cannot exceed those provided in s. 112.061, F.S. The opinion also notes that a municipal ordinance or local code does not constitute a "local law" and, thus, does not prevail over the provisions of s. 112.061, F.S.

III. Effect of Proposed Changes:

Section 1 of the bill provides that a municipality may reimburse public officers, employees, and authorized persons for per diem and travel expenses at rates the governing body of the municipality determines are reasonable, notwithstanding the maximum rates established in s. 112.061, F.S.

The bill ensures that a municipality's policy on per diem and travel expenses in existence prior to January 1, 2003 remains valid and in effect for the municipality until otherwise amended. However, if a municipality does not provide for per diem and travel expenses, the provisions of s. 112.061, F.S., shall govern.

Section 2 provides an effective date. It also states the bill applies retroactively to January 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ Op. Att'y Gen. Fla. 2003-01.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill allows a municipality to reimburse its officials, officers, employees and authorized persons for per diem and travel expenses at rates that its governing body determines are reasonable, notwithstanding the limits in s. 112.061, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
